87-321

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

MARILYN O'CONNOR,

Petitioner,

vs.

THE ESTATE OF PATRICIA A. MILHOLLAN,

Deceased, GERALD K. MILHOLLAN, Respondents

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEVADA
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a citizen proceeding in the proper person in the state courts, who has raised the issue of an attorney's conflict of interest in the case, has the right to equal protection of the state laws and the Code of Professional Responsibility by the state judiciary under the public policy of the American Bar Association and the XIV amendment of the Constitution of the United States.

2. Whether the petitioner, the whole-blood niece of the decedent and an original party-contestant in the Contest of Will Before Probate, who has not been awarded one dollar as provided by the terms of the disputed Will, has sufficient legal standing as an interested person to proceed on appeal under the XIV amendment of the Constitution of the United States.

3. Whether the petitioner has been denied the right secured by the XIV amendment of the Constitution of the United States to a trial by jury to decide issues of fact regarding the validity of the Will in question and her claim as an interested person.

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Marilyn O'Connor, the petitioner, respectfully prays that a writ of certiorari issue to review the summary judgment of the state district court entered November 18, 1985, and the order dismissing appeal by the Supreme Court of Nevada entered March 31, 1987.

OPINIONS BELOW

The orders of the Supreme Court of Nevada dismissing appeal and/or petition for a writ of mandate, which appear in Appendix A hereto, are not reported.

The order for summary judgment of the Second Judicial District Court of the State of Nevada entered November 18, 1985, is not reported. It appears in Appendix B hereto.

JURISDICTION

The judgment of the Supreme Court of Nevada was entered on March 31, 1987. It appears in Appendix C, p. 1c, *infra.*

A timely petition for rehearing was denied on May 27, 1987. It is included in Appendix C, p. 2c, *infra.*

The jurisdiction of the Supreme Court is invoked under Title 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND CANONS INVOLVED

Fourteenth Amendment, United States Constitution:

. . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 1 of the Nevada Constitution:

All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

Article I, Section 8 of the Nevada Constitution:

No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

Nevada Revised Statutes:
CONTESTS BEFORE PROBATE
NRS 137.010 Proceedings preliminary to trial.

The attorney general or any person interested, including a devisee or legatee under a former will, may contest the will by filing written grounds of opposition to the probate thereof at any time before the hearing of the petition for probate, and thereupon a citation shall be issued directed to the heirs of the decedent and to all persons interested in the will, including minors and incompetents, wherever residing, directing them to plead to the contest within 30 days after service of the citation which shall be made personally or by publication in the same manner provided by the Nevada Rules of Civil Procedure for the service of summons.

NRS 137.020(2) Trial of contest: Jury; costs.

Any issue of fact involving the competency of the decedent to make a last will and testament, the freedom of the decedent at the time of the execution of the will from duress, menace, fraud or undue influence, the due execution and attestation of the will, or any other question substantially affecting the validity of the will, shall be tried by the court unless one of the parties demands a jury. The party demanding the jury

shall advance the jury costs.

NOTARIES PUBLIC; OTHER OFFICERS
NRS 240.060 Powers and duties of notary public.

1. Each notary public may:

(a) Administer oaths or affirmations;

(b) Execute jurats.

NRS 240.065 Restrictions on powers of notary public. A notary public may not perform any act authorized by NRS 240.060 if he:

2. Will receive directly from a transaction relating to the instrument any commission, fee, advantage, right, title, interest, property or other consideration in excess of the authorized fees; . . .

NRS 240.150 Penalties for misconduct or neglect. For any misconduct or neglect in any of the cases in which any notary public appointed under the authority of this state, may act, either by the law of this state, or any other state, terriority or county, or by the law of nations, or by commercial usage, he is liable on his official bond to the parties injured thereby, for all the damages sustained; and for any willful violation or neglect of duty, a notary public shall be fined not by more than $2,000, and his appointment must be revoked.

Nevada Revised Statutes 133.040, 133.050, 137.030, 137.040 and 138.060 are reprinted and included in Appendix D hereto.

NEVADA SUPREME COURT RULES

Rule 48. Notice of change of attorney. When an attorney is changed, as provided in Rule 47, [*Rule 47*. When an attorney . . . ceases to act as such] written notice of the

change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then he shall be bound to recognize the former attorney.

Rule 203. Code of Professional Responsibility of the American Bar Association adopted. The Code of Professional Responsibility of the American Bar Association, as amended, and as interpreted by the opinions of the standing committee on Ethics and Professional Responsibility of the American Bar Association, is hereby adopted by reference and made additional rules of professional conduct of the state bar, insofar as they are not in conflict with the rules of professional conduct herein.

Disciplinary Rules, Code of Professional Responsibility, American Bar Association:

DR 5-101:

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

DR 5-102:

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may

continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101 (B)(1) through (4).

Nevada Code of Judicial Conduct:

CANON 3

A judge should perform the duties of his office impartially and diligently.

B. Administrative responsibilities.

(3) A judge should report dishonesty, or other serious unprofessional conduct of a judge or lawyer to the appropriate disciplinary body.

STATEMENT OF CASE

This case involves a total break down of all fundamental law, procedures, rules and ethical conduct in a probate matter. This is an exceptional situation that requires the supervisory powers of the Supreme Court of the United States.

Upon beginning to prepare this petition for a writ of certiorari, the petitioner noticed that the Record On Appeal on file herein by the Supreme Court of Nevada is incomplete. Certain vital documents and papers are missing while others have been redesignated "not filed" by the Nevada Supreme Court. Those that are missing are the disputed Will, the points and authorities in support of motion for summary judgment, the affidavit of attorney Paul E. Haefner in support of motion for summary judgment, and the notice to set filed by the respondent on May 7, 1985. All of these

documents were included in the entire original Record On Appeal filed in the Nevada Supreme Court on May 16, 1986. The clerk's certificate of the Second Judicial District Court is included in Appendix D, p. 5d, hereto.

The clerk's certificate of the Supreme Court of Nevada dated December 19, 1986, that verifies these documents were in the original record on appeal, appear in Appendix D, p. 8d hereto.

The motion for summary judgment the district court based its decision on consisted of fifteen (15) pages. (Index pages 63-77 of the original record on appeal of the Second Judicial District Court). It included the affidavits of Gerald Milhollan and Phillip Davis which the Supreme Court of Nevada has redesignated "not filed." (R, V. II, pp. 51, 82-88, and 89-90, sent to this court by the Supreme Court of Nevada on June 23, 1987). It also included the affidavit of the respondent's attorney, Paul E. Haefner, which does not now appear anywhere in the Record On Appeal herein. The motion to set filed by the respondent on May 7, 1985, is also missing. It is included in the original Record On Appeal from the Second Judicial District Court at pp. 59-60. All three of the above described missing documents are included in Appendix D, pp 9d to 16d hereto.

On June 19, 1987, the petitioner designated the entire Record On Appeal to this Court. (R, V. I, pp. 1-3). Yet pages 39-49 are unaccounted for. The petitioner has no idea what they may be in relation to.

The petitioner has not read nor received a copy of the "not filed" affidavit of attorney John Brydon. (R, V. II, pp. 161-164).

Finally, the affidavit of service of complaint and citation filed June 26, 1985, is listed as consisting of six (6) pages in the Record On Appeal, V. II. pp. 91-96.

This document is a single page in the original Record On Appeal that is currently on file in the district court, index page 109. The petitioner has no idea what the additional pages are about.

The petitioner questioned the clerk of the Nevada Supreme Court about all of these irregularities. She acted unconcerned and said she did not care to look into the matter.

The petitioner has found it very difficult to prepare this petition for certiorari under the circumstances and has done the best she could.

The main issue in this case is whether the will in dispute is invalid for want of a proper execution, declaration, subscription, attestation, and notorization. The Nevada laws relating to the proper execution of a valid will, Nevada Revised Statutes 133.040, 133.050, 137.030, and 137.040, are included in Appendix D, p. 1d, hereto.

The Supreme Court of Nevada failed to take into consideration the petitioner's demand for a jury trial and the facts regarding attorney Haefner's conflict of interest during the questionable execution of the disputed will when it erroneously dismissed the appeal. The state appellate court also erred when it overlooked the fact the petitioner had claimed to have been included in the decendent's former will in the petition for contest of will before probate.

The petitioner is the whole blood niece of the decedent. The decedent, Dora A. Milhollan (aka Patricia) died in a hospital on May 7, 1982. She is not survived by a husband, children, mother or father. Her closest surviving next of kin are her whole blood brother, William James Weiss (the petitioner's father), and her whole blood sister Pearl Ann Weiss Cohee.

The decedent's attending physician has sworn in an affidavit in support of the respondent's motion for summary judgment that after he told her she was suffering from terminal cancer on April 28, 1982, she told him she wished to prepare a new will and asked whether he could get her an attorney. The doctor said he immediately contacted the office of an attorney with whom he was familiar, and an attorney by the of Paul Haefner agreed to prepare a new will.

Mr. Haefner has also sworn in an affidavit in support of the motion for summary judgment that at the time the contents of the Will were discussed, only he and Mrs. Milhollan were present in the room. (Affidavit, Appendix D, p.13d hereto).

On April 29, 1982, the decedent supposedly executed a new Last Will and Testament "revoking any and all other wills and codicils thereto heretofore made by me."

Gerald K. Milhollan, brother of the decedent's husband who predeceased her, is named as the sole beneficiary and executor of her estate in the new will. Mr. Haefner is his attorney.

The fourth provision of the said will declares the following:

> "I have purposely made no provision for any other, person whether claiming to be an heir of mine or not, and if any other person, whether a beneficiary under this will or not, or mentioned or not mentioned herein, shall contest this will or object to any provision herein, I give to such person so contesting or objecting the sum of ONE DOLLAR ($1.00), and no more, in lieu of provisions which I have made or which I might have made for such person so contesting or objecting."

The petitioner, along with her father and aunt, employed an attorney and filed a petition for contest of will before probate on November 29, 1982. The petition was properly verified by and through the signature of the attorney pursuant to rule 11 of the Nevada Rules of Civil Procedure. (Appendix D, p., 3d, *infra*).

The petitioner herein asserted in paragraph 1 of the said petition that she was an interested person believed to be in a former will of the decedent. The state courts have completely disregarded this fact. (Petition For Contest of Will Before Probate, R, V.II, pp. 30-32).

The respondent did not dispute this averment until he filed an untimely answer and made a general denial of the contestants' petition on June 5, 1985. This was done without leave of the court or notice to the contestants. (Answer, R, V. II, pp. 49-50). This was just after the respondent's "associate" counsel had set the case for a jury trial, having previously filed certification on May 7, 1985, that the case was at issue pursuant to rule 4 of the Second Judicial District Court Rules. (Appendix D, p. 4d, *infra*). Also see Notice To Set. (Appendix D, p. 16d, *infra*).

The contestants had filed a demand for jury trial and paid the necessary costs on June 30, 1983. (Demand For Jury, R, V. II, p. 35). On May 20, 1985, the petitioner and the respondent filed an application for setting after agreeing to a firm trial date of January 6, 1986. This application does not appear in the Record On Appeal although it is listed on the docket sheet of the Second Judicial District Court.

On April 3, 1984 the contestants retained the services of a new attorney. (Notice of Appearance and Order Allowing Substitution of Attorney, R, V. II, pp. 37-38 and 45).

The petitioner advised the new counsel that she was aware of a conflict of interest in this matter concerning the respondent's attorney. This was in regards to the fact that members of his law firm had prepared, attested to, notorized, and helped execute the new will while also representing the interest of the sole beneficiary and executor. (Last Will and Testament, Appendix D, p. 9d, *infra*, and petition for probate of will and Issuance of Letters, R, V. II, pp. 1-3). It is also necessary to mention that one of the subscribing witnesses was Mr. Haefner's secretary. The contestants' new attorney refused to make an issue of this. She withdrew as counsel after advising the contestants they would have to represent themselves if they would not agree to a dismissal with prejudice. (See Exhibits 1 and 2, R, V. II, pp. 57-58 and Substitution of Attorneys, R, V. II, pp. 46, 47, 48).

Therefore, the contestants were compelled to represent themselves since they could not afford to waste any more money on attorneys. The respondent has since accused the petitioner of practicing law without a license for allegedly representing her father and her aunt as an attorney-in-fact. The petitioner's father and aunt are in their seventies. They are both frail and are not competent to represent themselves. The petitioner has never been licensed to practice law. She has never gone to law school or had any kind of legal training. She is self-taught, having only a high school education, has never been to prison or been a jail-house lawyer, and did not know the first thing about probate law before her aunt died.

The so-called representation of her father and her aunt was only incidental to the fact she had been forced to proceed without an attorney by members of the bar themselves.

The Supreme Court of Nevada dropped the names of the petitioners father and aunt from this case on appeal. They are, however, interested in its final outcome.

The petitioner first raised the federal question concerning the XIV amendment of the United States Constitution and the Second Judicial District Court of Nevada on July 8, 1985. Reference was made to it in papers styled "Complaintant's Answering Points and Authorities In Opposition to Defendant's Motion to Dismiss Complaint Upon Oath to Issue Citation" that included the following:

> "The complaintant [petitioner herein] has not petitioned this court to adjudicate the title of property. The complaint is only meant to secure the heirs due process and equal protection of the probate laws of the state of Nevada pursuant to the fourteenth amendment of the Constitution of the United States. The right of inheritance is an inherent property right. No one may plunder an estate and transgress upon the property rights of another. The complaintant's family is entitled to the discovery process as provided by state statute." (R, V. II, p. 123).

These papers had been filed in support of the petitioner's ex parte petition of emergency appointment of special administrator and complaint upon oath to issue citation filed July 24, 1985. The petitioner decided to file them after studying the probate laws of Nevada and coming to the realization that the respondent was a nonresident who did not qualify for the appointment of special administrator pending the will contest. Nevada Revised Statutes 140.010 and 140.060. (Appendix D, p. 2d, *infra*).

The respondent had been in illegal trespass for nearly three years in a property action *in rem* without court-

ordered letters of administration. The petitioner qualified for the appointment of special administrator and immediately applied for it. This was denied by the district court on November 18, 1985. (Order Appendix B, *p. 1* hereto).

The petitioner first raised the issue of Haefner's conflict of interest before the court in a motion for judgement on the pleadings also filed June 24, 1985, as follows:

> "Since Mr. Haefner has always been in representation of the sole beneficiary and executor of the will, his testimony is not credible and he is not a competent witness. Likewise, Mr. Haefner's secretary does not qualify as a competent witness because she was solicited by Mr. Haefner, not the testatrix as required pursuant to Nevada Revised Statute 133.050.
>
> The drafting and witnessing of the will by the attorneys and the agents acting in behalf of the sole beneficiary and executor of the estate constitutes a breach of ethical conduct for a conflict of interest and the alleged will is void for want of a competent execution. See Ethics Opinion No. 308, American Bar Association (1984) at 801:6607, a copy of which is attached hereto as Exhibit 1. (The plaintiffs hereby request this Honorable Court to report this conduct to the appropriate disciplinary body pursuant to Canon 3B(3) of the Code of Judicial Conduct if the situation warrants it.)"

(Nevada Revised Statute 133.050 is included in Appendix D, *p. 1, infra*).

The petitioner again raised the issue of Haefner's conflict of interest to the district court on July 5, 1985, in "Plaintiffs' Reply Memorandum of Points and

Authorities In Support of Motion For Judgment On the Pleadings." Included therein is the following:

> "In conclusion, these irregular proceedings have ensued for over three years due to the refusal of the attorney for the defendant(s) to withdraw as attorney of record in violation of disciplinary rules 5-101 and 5-102 of the American Bar Association. (See Ethics Opinion §801:1002, No. 352 (1985) attached hereto as Exhibit 1)."

The state district court did not rule on this issue even though Haefner had filed an affidavit confirming the fact he was the only witness the decedent had confided in concerning the provisions of the new will he had prepared for her to sign. The petitioner had explained to the court in an affidavit attached to the motion for judgment on the pleadings filed June 24, 1985, that Haefner told her he had deliberately not withdrawn as counsel of record for the respondent and he did not intend to. An excerpt of the affidavit is as follows:

> "9. That on May 9, 1985, your affiant telephoned the law offices of Benson and Haefner. During the discussion, Mr. Haefner advised your affiant that it was he, and not Mr. Benson, who had drafted and helped execute the puported [sic] will which named Harold Milhollan sole beneficiary and executor of the decedent's estate.
>
> 10. That during that same conversation, Mr. Haefner stated that he had purposefully not withdrawn from the case and that he was still attorney of record. He explained to your affiant that the law offices of Dixon and Brydon were just acting in his stead until the contest was over because he was a witness in the matter. Your affiant told him that this constituted a conflict of interest nonetheless."

(R, V. II, p. 80).

The petitioner claimed the right to a jury trial in papers filed on June 26, 1985, in opposition to the motion for summary judgment:

> "The first reason is that pursuant to Nevada Revised Statutes 137.020, 137.030, and 137.040, the contestants have the right to cross examine all of the available subscribing witnesses before a will may be proven.
>
> "The second reason is that a genuine dispute remains concerning whether or not the textatrix was in fact read the provisions of her alleged last will and testament before affixing her signature thereto." (Jury trials upon demand of party to will contest, NRS 137.020, *supra*).

The petitioner once again asserted the right to a jury trial in the district court in a motion to stay order pending appeal and/or petition for writ of mandate filed December 17, 1985, as follows:

> "The plaintiffs had made a demand and deposit for a jury trial pursuant to rule 38 of the Nevada Rules of Civil Procedure and Nevada Revised Statute 137.020. Thus, the court has abused its discretion by denying the plaintiffs the right to have a jury determine issues of fact regarding the validity of the purported will pursuant to NRS 137.040; therefore it lacks the jurisdiction to enter the will into probate. *Close v. Flanery*, 75 Nev. 255, 339 P. 2d 379 (1959)." (NRS 137.040, Appendix D, p. 1d, *infra*).

The district court did not make a ruling on the issue of the contestants' right to a jury trial.

On appeal to the Supreme Court of Nevada, the

petitioner first raised the issue of Haefner's conflict of interest in a petition of right to proceed in the proper person filed under Article I, Section 1 of the Constitution of the state of Nevada on March 14, 1986, for the purpose of filing an appeal and/or writ of mandate (R, V. I, pp. 112-132). Paragraph 5 of the said petition advises the court that the "disputed will was drafted, executed, and notorized by the attorney for the sole beneficiary and executor of the will, GERALD MILHOLLAN." She also raised the issue of the deprivation of the right to a jury trial in the said petition.

The petitioner applied to the state appellate court for leave to file a petition for a writ of mandate because the district court did not grant Letters Testamentary to Milhollan when it issued the order entering the will into probate on November 18, 1985. (Order, Appendix B, *p. 1b*, hereto).

The respondent did not file a motion to alter or amend the court order to include Letters Testamentary presumably because he was not a resident of the state of Nevada and did not qualify.

Thereafter, the petitioner's due process rights were deadlocked. The appeals court would not allow her to file a petition for a writ of mandate. It said "Accordingly, because O'Connor has an adequate remedy at law by way of an appeal, we will not permit her to file a petition for a writ of mandate to challenge the district court's order. *See generally* NRS 34.170 (writ will not issue where there is a plain, speedy and adequate remedy at law)." (Order, Appendix A, *p.* 6a, hereto). However, the state appellate court did not order her to file an opening brief and the respondent continued to be in illegal possession and trespass of the decedent's estate without court-ordered letters. On top of that, the district court ordered the contestants to post a $7500.00 bond

pending appeal for a non-resident who had not been required to swear an oath or post a bond. The contestants did not post such a bond.

Finally, the petitioner received a notice of hearing for issuance of Letters Testamentary from the respondent filed October 23, 1986. The petitioner personally appeared at the hearing held on December 10, 1986, to enter her objections to the issuance of letters testamentary to the respondent pursuant to Nevada Revised Statute 138.060. (appendix D, p. 1d, *infra*).

The respondent was represented by Mr. Haefner and his fellow law partner at the hearing. Haefner filed a cleverly phrased "Association of Counsel" on August 25, 1986, which identifies him as current counsel of record in the district court. (See Association of Counsel attached to Motion To Take Judicial Notice, R, V. I, pp. 74-90).

Mr. Haefner and several other attorneys have filed papers and pleadings on behalf on the respondent at various stages of this litigation over the objection of the petitioner. Not once did he, or any of the others, file a withdrawal and/or an entry of appearance, seek leave of the court for an order of substitution of attorneys, or notify the contestants of these switches as required by rule 48 of the Nevada Supreme Court Rules, *supra*.

The petitioner obtained copies of these documents from the district court clerk after paying the prescribed fee as she had to do with several papers and attached exhibits the respondent maliciously failed to forward to her.

The respondent did not give any testimony at the hearing for issuance of letters held on December 10, 1986. Nor did he present any testimony by anyone else. The petitioner moved the court to take judicial notice of

Nevada Revised Statute 240.065(2), *supra*, and attorney Haefner's obvious conflict of interest during the unlawful execution of the will. The court told the petitioner to file a written motion and said the respondent could file an opposition to it.

This was done, whereupon, the respondent accused the petitioner of practicing law without a license. The district court agreed and issued an order on January 28, 1987, enjoining the petitioner from making any further appearances in this action.

The petitioner filed a notice of appeal from that order on February 25, 1987. She paid an appeal bond and filed a designation of the entire record on appeal. The respondent filed an opposition to the transmittal of the original Record On Appeal March 12, 1987. On April 27, 1987, the district court entered an order denying the transmittal of the original record on appeal on the grounds it would interfer with the "ongoing probate matter herein." Since the integrity of the Record On Appeal is in question, the petitioner hereby suggests the necessity of an examination of the entire original record on appeal by the Supreme Court of the United States pursuant to Supreme Court Rule 19.1 and .2 that is currently on file in the Second Judicial District Court of Nevada.

The petitioner also filed a motion in the Supreme Court of Nevada on December 19, 1986, and moved it to take judicial notice of attorney Haefner's conflict of interest. (R, V. I, p. 74-90). The Nevada Supreme Court did not rule on it.

On March 31, 1987, the appeals court issued an order dismissing the appeal filed December 17, 1985, on the grounds the petitioner lacked standing. It avoided ruling on any of the questions the petitioner had raised. (Appendix A, *p. 1a, infra*).

On April 10, 1987, the petitioner filed a petition for rehearing on the grounds the appellate court had overlooked the material fact in law that she had claimed to be a legatee in a former will of the decedent in the pleading of contest of will before probate. (Petition For Rehearing, R, V. I, pp. 11-17).

She also raised two issues involving rights secured under the XIV amendment of the United States Constitution. The first concerned the fact the appeals court had not given her notice and an opportunity for a hearing regarding the question of her standing. The following is an excerpt from the petition for rehearing:

> "The determination by the lower court and this court that the appellant lacks standing in this matter is clearly erroneous. It was made upon the basis of mere conjecture. The plaintiff had been deprived of a notice and hearing in order to argue the point which is a right secured by the XIV Amendment of the United States Constitution."

The second issue was in regard to the willful evasion of the state courts to take judicial notice of an attorney's conflict of interest:

> "This presents an important moral and legal question of whether the willful evasion of the state courts to take judicial notice of an attorney's conflict of interest under the pretense that the plaintiff/appellant — who has been compelled to represent herself in the proper person because Bar members refused to proceed — lacks standing to contest the validity of a Will, is a wreckless disregard of the administration of civil justice, the public policy of the American Bar Association, and the XIV Amendment of the Constitution of the United States."

The petition for rehearing was denied without comment on May 27, 1987. (Appendix D, p. *2d, infra*).

REASONS FOR GRANTING WRIT

I. THE PETITIONER HAS STANDING TO SEEK REVIEW OF THE DISMISSAL OF THE APPEAL BY THE SUPREME COURT OF NEVADA AND THE SUMMARY JUDGMENT OF THE SECOND JUDICIAL DISTRICT COURT OF NEVADA UNDER THE XIV AMENDMENT OF THE UNITED STATES CONSTITUTION.

The petitioner has been denied the right to due process and equal protection of the state laws including access to the courts and a jury trial. This right is protected by the XIV amendment of the Constitution of the United States and Article I, Section 8 of the Constitution of Nevada, *supra.*

The petitioner clearly is an interested person who has standing in this proceeding for contest of will before probate pursuant to Nevada Revised Statute 137.010, *supra.* She timely asserted the claim of having been included in the decendent's former will. The respondent has not filed an affidavit or offered any proof the petitioner was not a legatee in a former will. He filed an untimely answer on June 5, 1985, that included a general denial of all of the allegations in the petition for contest of will before probate filed November 29, 1982. This was done without leave of the court or the petitioner's consent as required pursuant to rule 6(b) of the Nevada Rules of Civil Procedure. (Appendix D, p. 3d, *infra*). He filed this answer just after he had filed a certification that none of the pleadings were unanswered and the case was at issue. The said pleading can not be taken seriously because it even denies the petitioner's

father and aunt are the decedent's heirs. The respondent admitted this allegation when he filed the petition for probate and issuance of letters. The petitioner has asserted that the untimely filing of an answer by the respondent is a sham pleading that entitles her to a judgment on the pleadings. But even if the answer was valid, the burden of proof is upon the defendant to prove allegations denied in an answer before he may prevail. *Jos. Schlitz Brewing Co. v. Grimmon*, 28 Nev. 235, 81 Pac. 43 (1905).

Even on the presumption the will is valid, the petitioner still has standing because she has not been awarded the sum of ONE DOLLAR ($1.00) as specified by the provisions of the new will for any person who contests or objects to it.

There has not been an appellate court review on appeal of the validity of the will and the petitioner's right to a jury trial. The Supreme Court will review a state court's findings where a federal right has been denied as a result of a finding shown by the record to be without evidence to support it. *Saunders v. Shaw*, 244 U.S. 317 (1917).

The court feels itself free to make an independent examination of the facts when necessary to decide whether a person has been deprived by a state court of a right secured by the Constitution. *Norris v. Alabama*, 294 U.S. 587 (1934).

The petitioner has been denied any semblance of due process of law by the state courts and this case is now ripe for review by the Supreme Court under the XIV amendment of the United States Constitution.

II. ATTORNEYS ARE NOT ABOVE THE LAW AND THEY MUST BE HELD ACCOUNTABLE BY THE STATE JUDICIARY WHEN

THE ISSUE OF UNETHICAL CONDUCT IS SQUARELY PLACED BEFORE IT.

The state of Nevada has adopted the Code of Professional Responsibility of the American Bar Association pursuant to rule 203 of the Nevada Supreme Court Rules, *supra.*

The preamble to the Code of Professional Responsibility of the American Bar Association begins as follows:

> "The continued existence of a free democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.
>
> Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct."

The Code of Professional Responsibility proceeds to explain in its preliminary statement that the Disciplinary Rules, unlike ethical consideration, are mandatory in character. "Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action." Thus, it is the public policy of the American Bar Association

to hold attorneys accountable for their professional misconduct.

The petitioner advised the state courts of the violation of Disciplinary Rules 5-101 and 5-102 of the American Bar Association by the respondent's attorney during the course of litigation. The state courts did not rule on it or report it to the proper disciplinary body.

Canon 3 B(3) of the Nevada Code of Judicial Conduct, *supra*, provides that it is an administrative duty for a judge to report dishonesty and other serious unprofessional conduct of a lawyer to the appropriate disciplinary body.

Canon 3 B(3) of the Code of Judicial Conduct of the American Bar Association says essentially the same thing as the Code of the state of Nevada. However, there is one major difference in the two judicial codes. The canons and text in the American Bar Code of Judicial Conduct "establish manadatory standards unless otherwise indicated." (*See American Bar Code of Professional Responsibility and Code of Judicial Conduct* (1978), p. 59). The state of Nevada has not adopted any mandatory standards for judicial enforcement of the Code of Professional Responsibility of the American Bar Association.

As long as the state courts condone the illegal misconduct of the respondent's attorney, the petitioner is precluded from putting in a claim for damages against his official bond as provided in Nevada Revised Statutes 240.150, *supra*.

This is the problem the petitioner is faced with. But it should go without saying or the necessity of the written word, that a judge, of all people, is required to protect the individual citizen from the unlawful conduct of an attorney by and through his or her oath of office

and the XIV amendment of the Constitution of the United States.

For these reasons, the petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the judgment of the Nevada courts. In the event the Petition is granted, Petitioner prays the judgment of the state courts be reversed, that the cause be remanded, and that the Court below be directed to issue a Writ of Mandamus commanding the district court to vacate its summary judgment and enter a judgment on the pleadings or a jury trial for the petitioner.

MARILYN O'CONNOR
870 Soda Lake Road
Fallon, Nevada 89406
(702) 867-3121
Pro se

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARILYN O'CONNOR,
Appellant,
vs.
THE ESTATE OF PATRICIA A. MILHOLLAN, Deceased, GERALD K. MILHOLLAN,
Respondent.

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court granting summary judgment in respondent's favor, and admitting a will into probate.

On April 29, 1982, Patricia Milhollan executed a will naming her brother-in-law, Gerald K. Milhollan, as the executor and sole beneficiary of her estate. On May 7, 1982, Patricia Milhollan died and, on June 10, 1982, a petition was filed in the district court requesting that Patricia Milhollan's will be admitted to probate. That petition named Pearl Cohee, William Weiss, and Katherine Milhollan as the "heirs, next of kin and devisees of the decendent." A hearing was scheduled on the petition, and notice of that hearing was mailed to each of the individuals named above and published in a newspaper of general circulation. *See* NRS 136.100; 155.020.

On July 16, 1982, William Weiss, Patricia Milhollan's brother and one of the parties named in the petition to probate the will, executed a "Notice of Assign-

ment of Power of Attorney," giving appellant, his daughter, a "power of attorney to act in all proceedings [concerning the probate of Patricia Milhollan's will]."

On July 29, 1982, one day prior to the scheduled hearing on the petition to probate the will, appellant filed the power of attorney described above in the district court. At that same time, appellant, purporting to act on behalf of William Weiss, filed a "Notice of Contest and Opposition to Petition for Probate." That document alleged that Gerald Milhollan used undue influence to become the sole beneficiary and executor of Patricia Milhollan's estate. It further alleged that the will was not properly attested, that Patricia Milhollan did not participate in the drafting of the will and that Patricia Milhollan lacked the capacity to execute the will.

On November 8, 1982, the district court entered an order striking the contest to the will because it was not notarized as required by DCR 20. Thereafter, appellant, through an attorney, filed another petition to contest the validity of Patricia's will. That document alleged that Gerald Milhollan had actually hired the attorney who drafted the will and had then fraudulently obtained Patricia's Milhollan's signature to that document through the use of undue influence. After this document was filed, appellant retained another attorney to represent her action below. That attorney later withdrew, however, and appellant has since been proceeding in proper person.

On June 5, 1985, Gerald Milhollan filed his answer to appellant's will contest, and, one week later filed a motion for summary judgment on the will contest. Appellant opposed the motion for summary judgment, and filed several other motions in response, which were opposed by Gerald Milhollan.

On November 18, 1985, the district court entered

an order granting Gerald Milhollan's motion for summary judgment and admitting the will to probate. The district court also denied all of appellant's motions. This appeal followed.

Initially, we note that the order of the district court disposed of several motions pending before it. We further note, however, that NRS 155.190 specifies the orders from which an appeal may be taken in a probate proceeding. In the present case, the order granting Gerald Milhollan's motion for summary judgment also admitted Patricia Milhollan's will to probate. Therefore, the summary judgment order is appealable pursuant to NRS 155.190(2). The remaining portions of the district court's order did not, however, result in determinations that are appealable pursuant to NRS 155.190 and we therefore lack jurisdiction to review those portions of the district court's order. *See* Jarstad v. National Farmers Union, 92 Nev. 380, 383, 552 P. 2d 49, 51 (1976) (no appeal lies except when authorized by statute). Accordingly, our consideration of this appeal shall be limited to the propriety of the order granting summary judgment below.

Moreover, we note that appellant's status in this appeal is unclear. Although she designates herself as the appellant "in proper person," the notice of appeal is signed by appellant as "attorney-in-fact" for William Weiss and Pearl Cohee. Our review of the record in this case, however, reveals that appellant lacks standing to prosecute this appeal in proper person or to prosecute this appeal on behalf of William Weiss and Pearl Cohee as their "attorney-in-fact."

In the first place, we note that NRS 137.010(1) allows "any person interested, including a devisee or legatee under a former will," to contest the validity of a will prior to its admission to probate. In the present

case, the record reveals that Patricia Milhollan died without a surviving spouse, issue or parents. Therefore, if appellant's will contest were successful and the estate were distributed according to the rules of intestate succession, it would devolve, in equal shares, to Patricia's siblings and to the children of a deceased sibling by right of representation. *See* NRS 134.060. The record in this case establishes, however, that appellant is the daughter of Patricia Milhollan's *living* brother, William Weiss. Further, appellant has never alleged that she was a named devisee or legatee under a former will executed by Patricia Milhollan. Accordingly, we conclude that appellant is not a "person interested" in the estate of Patricia Milhollan and that she therefore lacks standing to contest the validity of Patricia Milhollan's will.

We further note that, in an apparent attempt to overcome her lack of standing in this matter, appellant signed the notice of appeal as "attorney-in-fact" for William Weiss and Pearl Cohee. Appellant apparently believes that the power of attorney she obtained from her father empowers her to represent her father's interest in the district court and in this appeal. We disagree. It is well settled in this state that a person may not be represented in a court of law by a non-attorney agent. *See* SCR 77; NRS 7.285; Martinez v. District Court, 102 Nev. 561, 729 P. 2d 487 (1986). In the present case, appellant is not an attorney and therefore cannot represent the interests of either William Weiss or Pearl Cohee in this or any other court.

As a final matter, we conclude that no genuine issue of fact remained pending in the action below and that the district court therefore properly granted Gerald Milhollan's motion for summary judgment. *See* NRCP 56(c); Pacific Pools Constr. v. McClain's Concrete, 101 Nev. 557, 706 P. 2d 849 (1985). In particular, we note

that the affidavits supporting the motion for summary judgment established that Gerald Milhollan did not hire an attorney to draft the will, that Patricia Milhollan was of sound mind when she executed the will, and that she was aware of the contents of the will when it was signed. In her opposition to the motion for summary judgement, however, appellant submitted only the affidavit of herself, which alleged that her petition to contest the will was properly served, and related the alleged hearsay statements of a subscribing witness that the will was not read to Patricia Milhollan before she signed it. Because none of the "facts" contained in appellant's affidavit tended to show that Patricia Milhollan's will was invalid, the district court did not err when it admitted that document into probate.

Having reviewed the record on appeal, we conclude that appellant cannot demonstrate error in this appeal, and that briefing and argument are unwarranted. *See* Luckett v. Warden, 91 Nev. 681, 682, 541 P. 2d 910, 911 (1975), *cert. denied*, 423 U.S. 1077 (1976). Accordingly we hereby

ORDER this appeal dismissed.[1]

DATED: March 31, 1987

Gunderson, C.J.
Steffen, J.
Young, J.
Springer, J.
Mowbray, J.

[1] In light of this disposition, we hereby deny as moot all of the motions pending in this matter.

cc: Hon. Robin A. Wright, District Judge
John R. Brydon
Marilyn Weiss O'Connor
Judi Bailey, Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARILYN O'CONNOR,
Appellant,
vs.
THE ESTATE OF PATRICIA A. MILHOLLAN, Deceased; GERALD K. MILHOLLAN,
Respondents.

ORDER

Marilyn Weiss O'Conner has filed a motion to proceed in proper person in this court pursuant to NRAP 46(b), for the purpose of pursuing an appeal from an order of the district court which, among other things, granted summary judgment against appellant in a will contest proceeding. Alternatively, O'Connor seeks permission to file a proper person petition for a writ of mandate in this court to challenge the lower court's order. We have also received from O'Connor a motion for a stay of the lower court's order pending our review of her appeal or, alternatively, her petition for a writ of mandate.

Initially, we note the district court's order granting summary judgment against appellant on her petition to contest the will is a final order which is directly appealable to this court. *See* NRAP 3A(b); *see also* NRS 155.190(2). Accordingly, because O'Connor has an adequate remedy at law by way of an appeal, we will not permit her to file a petition for a writ of mandate to challenge the district court's order. *See generally* NRS

See generally NRS 34.170 (writ will not issue where there is a plain, speedy and adequate remedy at law). Therefore, O'Connor's motions are denied insofar as she seeks permission to file a petition for a writ of mandate in this court.

Further, with regard to O'Connor's motion for a stay pending appeal, we note that the district court has already granted O'Connor a stay pending appeal of its order, conditioned upon her posting a $7,500 bond. In her motion for a stay pending appeal in this court, however, O'Connor contends that it was improper for the district court to require her to post a bond in that amount. We disagree. NRAP 8(b) specifically provides that a court may condition a stay pending appeal on the filing of a bond or other appropriate security in the district court. *See also* NRCP 62(d). Moreover, appellant has not convinced us that the lower court abused its discretion by requiring O'Connor to post a bond in that amount. Accordingly, we deny O'Connor's motion for a stay pending appeal from this court; the district court's order requiring O'Connor to post a $7,500 bond shall remain in effect.

Finally, we note with concern that O'Connor filed her notice of appeal on December 17, 1985, yet to date this court has not received the record on appeal in this matter. Under NRAP 11(a) an appellant has forty (40) days from the date on which the notice of appeal is filed within which to cause transmission of the record on appeal to the clerk of this court, and the record in this case is therefore long overdue. Further, appellant has neither requested nor received an extension of time from this court in which to transmit the record, and appellant has not indicated whether she has requested or received an extension of time from the district court.

NRAP 12(c) permits this court to dismiss an ap-

peal where the appellant has failed to cause the timely transmission of the record on appeal. Accordingly, O'Connor shall have fifteen (15) days from the date of this order within which to either cause the transmission of the record on appeal to the clerk of this court, or to show cause why her appeal should not be dismissed pursuant to NRAP 12(c). O'Connor may file a response to this order in proper person. However, we defer resolution of her motion to proceed in proper person for the remainder of the appeal until she transmits the record on appeal to the clerk of this court. Failure to respond to this order shall result in the immediate dismissal of this appeal.

It is so ORDERED.

DATED: May 2, 1986

Mowbray, C.J.
Springer, J.
Gunderson, J.

cc: Hon. Robin A. Wright, District Judge
Marilyn Weiss O'Connor
John R. Brydon
Judy Bailey, Clerk

IN THE SECOND JUDICIAL COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF	)	Case No. 82-4846
THE ESTATE OF	)	Dept. No. 8
PATRICIA A. MILHOLLAN,	)	
Deceased.	)	

ORDER

This case involves a Contest of Will Before Probate. Several motions are before the Court pertaining to the above-captioned matter. The Court, having read the points and authorities, affidavits, and exhibits of the parties, and being fully advised, decides each of these motions as follows:

Respondents Gerald K. Milhollan and Katherine Milhollan have moved for summary judgment in their favor, admitting the Last Will and Testament of Patricia A. Milhollan to probate. Respondents have supported this motion with sufficient affidavit Contestants, William Weiss, Pearl Ann Cohee and Marilyn O'Connor, have filed no competent evidence to oppose this motion. Further, Their Petition for Will Contest Before Probate is unverified. Therefore, Respondents' Motion for Summary Judgment is hereby granted. See NRCP 56(e).

Contestants have moved for a judgment on the pleadings based upon Respondents' tardy answer to their petition. Yet, contestants never entered a default, and thus, the Court is within its discretion to allow an untimely response. *Opac Lumber v. Phipps*, 75 Nev. 312,

315, 340, P. 2d 95 (1959). Contestants also claim deficiencies in notices given them by Respondents of the initial Petition for Probate of Will and Issuance of Letters. No such deficiencies exist. Proof of notice to Contestants by certified mail of the July 30, 1982 hearing to admit the will to probate are contained in the file, as well as proof of publication. (See NRS 136.100 and 155.010 *et seq.* for notice requirements.) Contestants in fact admit receipt of such notice. See Respondents' Reply Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings, p. 2:6-2:9. Contestants also put forth several other arguments which are supported neither in law nor fact and cannot serve as a basis upon which to grant their motion. For these reasons, Contestants' Motion for Judgment on the Pleadings is hereby DENIED.

A Complaint Upon Oath to Issue Citation pursuant to NRS 143.110 was filed by Contestant Marilyn O'Connor, and Respondents have moved to dismiss the same. As Respondents assert, Section 143.110 complaints are limited to issues of discovery and conversion of the decendent's assets, *Ward v. Daniels*, 51 Nev. 125, 269 P 913 (1928). Ms. O'Connor's Complaint appears to be based upon a claim of estate mismanagement, and therefore does not allege facts sufficient for issuance of a citation pursuant to NRS 143.110. (Furthermore, in light of this Court's granting Respondents' Motion for Summary Judgment, it is clear that complainant is not a "person interested in the estate," and thus lacks standing to bring such a complaint. NRS 143.110.)

The Court also denies Marilyn O'Connor's *Ex Parte* Petition for Emergency Appointment of Special Administrator, finding no cause to grant such request.

IT IS THEREFORE ORDERED that Gerald K. Milhollan and Patricia A. Milhollan be, and hereby

are, granted summary judgment in their favor and against Contestants William J. Weiss, Pearl Ann Cohee and Marilyn O'Connor, summarily dismissing the Petition for Contest of Will Before Probate in the above-captioned matter.

IT IS FURTHER ORDERED that the Last Will and Testament of Patric[illegible] A. Milhollan be, and hereby is, admitted to probate.

IT IS FURTHER ORDERED that Contestants' Motion for Judgment on the Pleadings be, and hereby is, DENIED.

IT IS FURTHER ORDERED that Contestants' Complaint Upon Oath to Issue Citation be, and hereby is, DISMISSED.

IT IS FURTHER ORDERED that Contestants' *Ex Parte* Petition for Emergency Appointment of Special Administrator be, and hereby is, DENIED.

DATED this 18th day of November, 1985.

Robin Anne Wright
DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned hereby certifies that on Monday, November 18, 1985, she mailed copies of the foregoing Order to the following:

John R. Brydon, Esq.
Attorney at Law
P.O. Box 2450
Reno, Nevada 89505

Pearl Ann Cohee
P.O. Box 1344
29 Palms, CA 92277

Marilyn O'Connor
870 Soda Lake Road
Fallon, Nevada 89406

William J. Weiss
c/o Marilyn O'Connor
870 Soda Lake Road
Fallon Nevada 89406

Mildred McCuistion, Secretary to
Judge Wright

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Judith Fountain, the duly appointed and qualified Clerk of the Supreme Court of said State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in the matter of O'Conner v. The Estate of Patricia A. Milhollan, No. 17124.

JUDGMENT

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: "Order this appeal dismissed."

Judgment, as quoted above, entered this 31st day of March, 1987.

JUDGMENT

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: "Rehearing denied."

Judgment, as quoted above, entered this 27th day of May, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court, at my office in Carson City, Nevada, this 4th day of June, 1987.

Judith Fountain
Clerk of Supreme Court of the State of Nevada

IN THE SUPREME COURT
OF THE STATE OF NEVADA

MARILYN O'CONNOR, *Appellant,* *vs.* **THE ESTATE OF PATRICIA A. MILHOLLAN, Deceased, GERALD K. MILHOLLAN,** *Respondent.*	)	No. 17124

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.[1]

DATED: May 27, 1987

Gunderson, C.J.
Steffen, J.
Young, J.
Springer, J.
Mowbray, J.

[1] In light of this disposition, we deny appellant's request to add documents to the record on appeal in this matter.

cc: Hon. Robin Anne Wright, District Judge
John R. Brydon
Marilyn Weiss O'Connor
Judi Bailey, Clerk

Nevada Revised Statutes:

WILLS
Execution

133.040 Valid wills: Requirements of writing, subscription, witnesses, and attestations. No will executed in this state, except such nuncupative will and such holographic will as are mentioned in this chapter, shall be valid unless it be in writing and signed by the testator, or by some person in his presence, and by his express direction, and attested by at least two competent witnesses, subscribing their names to the will in the presence of the testator.

133.050 Attesting witnesses may make self-proving affidavits to be attached to will.

1. Any or all of the attesting witnesses to any will may, at the request of the testator, make and sign an affidavit before any person authorized to administer oaths in or out of the state, stating such facts as they would be required to testify to in court to prove the will. The affidavit must be written on the will, or if that is impractible, on some papper attached thereto. The sworn statement of any witness must be accepted by the court of probate as if it had been taken before the court.

CONTESTS BEFORE PROBATE

137.030 Admissibility of declarations of testator. On the trial, testimony as to the declaration of a testator shall be admissible if contemporaneous with the execution of the will insofar as the same may relate to the intention of the testator, his state of mind, his feelings, competency, and the existence or nonexistence of duress and undue influence.

137.040 Evidence of Execution. If the will is contested,

all of the subscribing witnesses who are present in the county and who are of sound mind must be produced and examined; or the death, absence or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county, and the evidence of none of them can be produced, the court may admit the evidence of other witnesses to prove the due execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of any of the subscribing witnesses.

138.060 Objections to appointment.

1. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and such objections shall be heard and determined by the court.

SPECIAL ADMINISTRATORS

140.010 Causes for appointment. The district judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county and counties the same may be found, and to exercise such other powers as may be necessary to preserve the estate:

1. When there shall be a delay in granting letters testamentary or letters of administration, from any cause.

140.060 Appointment pending contest of will or appeal from order; powers; bond.

1. When a special administrator is appointed pending determination of a contest of a will instituted prior to the probate thereof, or pending an appeal from an order appointing, suspending, or removing an executor or administrator the special administrator shall have the same powers, duties, and obligations as a

general administrator, and the letters of administration issued to him shall recite that the special administrator is appointed with the powers of a general administrator.

Nevada Rules of Civil Procedure:

Rule 6. TIME:

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the parties, by written stipulation of counsel filed in the action, may enlarge the period, or the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration period of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 50(b), 52(b), 59(b), (d) and (e) and 60(b), except to the extent and under the conditions stated in them.

Rule 11. SIGNING OF PLEADINGS:

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and acknowledge his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and that it is no inter-

posed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be striken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. An appearance in proper person shall be acknowledged subsequently to the filing of the complaint.

Second District Court Rules:

Rule 4. Setting of cases.

2. The calendar clerk's office shall be open from 8:00 a.m. to 5:00 p.m. on all judicial days except Saturday. Contested matters shall be set by the calendar clerk on dates agreeable to counsel. A 10-day notice to appear and set a time for trial may be given by any party upon certification that the case is at issue. At the time fixed in the notice, with showing of service upon all parties, the calendar clerk shall set the case for trial at a time certain. If fewer than all parties appear before the calendar clerk on an application for setting, and file with the calendar clerk conformed copy of written notice to appear for setting at that hour and day, the calendar clerk shall set the matter to be heard on a date satisfactory to the counsel present. Time shall be computed as provided in NRCP 6.

**IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

IN THE MATTER OF THE ESTATE OF PATRICIA A. MILHOLLAN, Deceased.	)	Case No. 82-4846 Dept. No. 8 CERTIFICATE

STATE OF NEVADA, COUNTY OF WASHOE.	)	SS.

I, JUDY BAILEY, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, said court being a court of record, having a common law jurisdiction, and a clerk and a seal, do hereby certify that the foregoing is the original (with the exception of the penciled page numbers in the lower right hand corner) of each of the following documents: LAST WILL AND TESTAMENT OF PATRICIA A. MILHOLLAN; PETITION FOR PROBATE OF WILL AND ISSUANCE OF LETTERS; NOTICE OF HEARING; AFFIDAVIT OF MAILING OF NOTICE OF HEARING; RETURN RECEIPTS FROM CERTIFIED MAILINGS OF JUNE 11, 1982; PROOF OF PUBLICATION; NOTICE AND ASSIGNMENT OF POWER OF ATTORNEY; NOTICE OF CONTEST AND OPPOSITION TO PETITION FOR PROBATE; SUBSTITUTION OF ATTORNEYS; MOTION TO STRIKE; CONTESTANT'S OPPOSITION TO PETITIONER'S MOTION TO STRIKE; REPLY IN SUP-

PORT OF MOTION TO STRIKE; ORDER GRANTING MOTION TO STRIKE; NOTICE OF ENTRY OF ORDER; PETITION FOR CONTEST OF WILL BEFORE PROBATE; NOTICE; DEMAND FOR JURY; APPLI-FOR SETTING; RECEIPT FOR FIRST DAY JURY FEES; NOTICE OF APPEARANCE; MOTION FOR SUBSTITUTION OF ATTORNEY; AFFIDAVIT OF MARILYN O'CONNOR; AFFIDAVIT OF PEARL COHEE; ORDER ALLOWING SUBSTITUTION OF ATTORNEY; NOTICE TO SET; SUBSTITUTION OF ATTORNEYS (3); NOTICE TO SET; ANSWER TO PETITION FOR CONTEST OF WILL BEFORE PROBATE; MOTION FOR SUMMARY JUDGMENT; MOTION FOR JUDGMENT ON THE PLEADINGS; EX PARTE NOTICE OF OBJECTIONS TO PROCEEDINGS AND DEMAND FOR EXAMINATION BY THE CLERK OF THE COURT FOR WASHOE COUNTY; EX PARTE PETITION FOR EMERGENCY APPOINTMENT OF SPECIAL ADMINISTRATOR; COMPLAINT UPON OATH TO ISSUE CITATION; CITATION FOR APPEARANCE TO SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN ILLEGAL TRESSPASS AND CONVERSION; PLAINTIFF'S ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AFFIDAVIT OF SERVICE OF COMPLAINT AND CITATION; MOTION TO DISMISS COMPLAINT UPON OATH TO ISSUE CITATION; REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS; PLAINTIFFS REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS; AFFIDAVIT

OF MAILING; COMPLAINTANT'S ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT UPON OATH TO ISSUE CITATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS; ORDER; NOTICE OF CHANGE OF LAW FIRM NAME; NOTICE OF APPEAL AND/OR PETITION FOR A WRIT OF MANDATE; DESIGNATION OF RECORD ON APPEAL; MOTION TO STAY ORDER PENDING APPEAL AND/OR PETITION FOR WRIT OF MANDATE; OPPOSITION TO MOTION TO STAY ORDER PENDING APPEAL AND/OR PETITION FOR WRIT OF MANDATE; ORDER FOR BOND TO STAY PROBATE PENDING APPEAL which were designated as the Record on Appeal.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 14th day of may, A.D. 1986.

JUDI BAILEY, Clerk

A. Livermore, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA
CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Judith Fountain, the duly appointed and qualified Clerk of the Supreme Court of said State of nevada, do hereby certify that the foregoing is a full, true and correct copy of the original Last Will and Testment, Motion for Summary Judgment, and Affidavit of Paul E. Haefner in Support of Motion for Summary Judgment, contained in the Record on Appeal, in the matter of Marilyn O'Connor v. The Estate of Patricia A. Milhollan, Deceased, Gerald K. Milhollan, Case No. 17124.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court, at my office in Carson City, Nevada, this 19th day of December, 1986.

Judith Fountain
Clerk of Supreme Court of the State of Nevada

Sharon E. Page, Deputy

LAST WILL AND TESTAMENT OF PATRICIA A. MILHOLLAN

I, PATRICIA A. MILHOLLAN, a resident of the City of Reno, County of Washoe, State of Nevada, being of sound and disposing mind and memory, and not acting under the duress, menace, fraud or undue influence of any person or persons whomsoever, do make, publish and declair this to be my LAST WILL AND TESTAMENT, hereby revoking any and all other wills and codicils thereto heretofore made by me.

FIRST: I declare that I am a widow, and that my husband's name was HAROLD LEE MILHOLLAN, and that there were no children born of this marriage and that I have no other children, either living or deceased.

SECOND: I give, devise and bequeath to my brother-in-law, GERALD K. MILHOLLAN, all of my estate, whether real, personal or mixed, wheresoever the same may be situated, which I may possess or own, or in or to which I may have any right, title, estate or interest at the time of my death, said property to be the sole, separate and distinct property of my said brother-in-law, GERALD A. MILHOLLAN.

(a) In the event that my brother-in-law GERALD K. MILHOLLAN, should predecease me, then I give, devise and bequeath all of my estate, whether real, personal or mixed, wheresoever the same may be situated, which I may possess or own, or in or to which I may have any right, title, estate or interest at the time of my death, said property to be the sole, separate and distinct property of my sister-in-law, KATHERINE MILHOLLAN.

THIRD: I direct that all estate, inheritance, transfer and succession taxes lawfully predicated upon my death as the taxable event, or lawfully imposed upon my estate, any life insurance, annuities, trusts, and appointive properties shall be paid out of my general estate and not charged against the beneficiaries or distributees.

FOURTH: I have purposely made no provision for any other person, whether claiming to be an heir of mine or not, and if any other person, whether a beneficiary under this will or not, or mentioned or not mentioned herein, shall contest this will or object to any provision herein, I give to such person so contesting or objecting the sum of ONE DOLLAR ($1.00), and no more, in lieu of provisions which I have made or which I might have made for such person so contesting or objecting.

FIFTH: I appoint my brother-in-law, GERALD K. MILHOLLAN as executor of this Will, provided that if said GERALD K. MILHOLLAN should not be living or should for any other reason be incapable of acting as such executor, then in that event I appoint KATHERINE MILHOLLAN as executrix of this my Last Will and Testament, and I direct that they shall not be required to give bond or security for the proper discharge of their duties as executor and/or executrix. I authorize my executor and/or executrix to sell, to sell, at either public or private sale, encumber or lease any property belonging to my estate, either with or without notice, subject to such confirmation as may be required by law, and to hold, manage and operate any such property. My executor and/or executrix are further authorized, subject to court approval, either to continue the operation of any business belonging to my estate for such time and in such manner as he or she may deem advisable and for the best interests of my estate, or to sell or liquidate such business as such time and upon such terms as my executor and/or executrix may deem advisable and for

the best interest of my estate; and any such operation, sale or liquidation shall be at the risk of my estate and without liability on the part of my executor and/or executrix for any losses resulting therefrom.

SIXTH: I direct that all my just debts, funeral expenses, and expenses in connection with the administration of my estate be paid as soon after my death as practicable, except that any debt or expense secured by a mortgage, pledge, or similar encumbrance on property owned by me at my death shall not be paid by my estate, but that such property shall pass subject to such mortgage, pledge or similar encumbrances; however, in furtherance of my intent as hereinbefore expressed, the decision of whether or not to pay any of such encumbrances shall be within the sole discretion of my executor and/or executrix under this my Last Will and Testament.

SEVENTH: If any provision of this will or of any codicil should be invalid, it is my intention that all the remaining provisions thereof shall continue to be fully effective.

IN WITNESS WHEREOF, I have hereunto, and at the foot of the preceding two (2) pages hereof, set my hand and seal this 29 day of April, 1982.

We, the undersigned, hereby declare that the foregoing instrument, consisting of four (4) pages, including this page, was, on the date last above named, by said PATRICIA A. MILHOLLAN signed, sealed and published as and declared to be her LAST WILL AND TESTAMENT, in the presence of us, who, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Ellen Wright residing at Reno, Nevada.
Karen Murphy residing at Reno, Nevada.

STATE OF NEVADA)
COUNTY OF WASHOE) SS.
)

Then and there personally appeared the within named Ellen Wright and Karen Murphy who, being duly sworn, depose and say: That they witnessed the execution of the within win of the within named testatrix, PATRICIA A. MILHOLLAN; that said testatrix subscribed said will and declared the same to be her LAST WILL AND TESTAMENT in their presence; that they thereafter subscribed the same as witnesses in the presence of said testatrix and in the presence of each other, and at the request of said testatrix; that the said testatrix, at the time of the execution f said will, appeared to them to be of full age and of sound mind and memory, and that they make this affidavit at the request of said testatrix.

Ellen Wright
Karen Murphy

SUBSCRIBED ND SWORN TO before me this 29 day of April 1982.

Paul Haefner
NOTARY PUBLIC

PAUL E. HAEFNER
Notary Public - State of Nevada

Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES AUG. 5, 1985

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of	)	No. 82-4846
	)	Dept. No. 8
the Estate of	)	*AFFIDAVIT OF*
PATRICIA A. MILHOLLAN,	)	*PAUL E.*
	)	*HAEFNER IN*
Deceased.	)	*SUPPORT OF*
		MOTION FOR
		SUMMARY
		JUDGMENT
STATE OF NEVADA	)	
	)	ss.
COUNTY OF WASHOE	)	

PAUL E. HAEFNER, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada and was the attorney who prepared the Last Will and Testament of Patricia A. Milhollan.

2. On or about April 28, 1982, I was contacted by Dr. Phillip R. Davis to meet with Patricia Milhollan for the purpose of preparing a Last Will and Testament. At that time Patricia Milhollan was a patient in Saint Mary's Hospital under the care of Dr. Davis.

3. At the time that I was contacted to prepare this Will, I discussed the matter with Dr. Davis and he indicated to me that Mrs. Milhollan was competent to execute a Will, being that she was not under medication that affected her mental capacity. After my first meeting with Mrs. Milhollan I determined in my own mind that she was fully competent to execute a new Last Will and Testament.

4. At the time that the contents of this Will were discussed with Mrs. Milhollan, the only persons present in the room during that discussion were myself and Mrs. Milhollan. There were no other individuals present who could in any way influence the contents of the Will I was asked to prepare.

5. I was not employed by Gerald K. Milhollan to prepare Mrs. Milhollan's Will but was contacted by Dr. Phillip R. Davis because Mrs. Milhollan had informed him that she needed an attorney to prepare a new Will. I personally visited Mrs. Milhollan at Saint Mary's Hospital and she personally retained me to prepare her Last Will and Testament.

6. At the time that Mrs. Milhollan's Last Will and Testament was executed, the only parties present were myself, my secretary, Karen Murphy and a nurse by the name of Ellen Wright. At that point in time I had never met nor even talked to Gerald K. Milhollan.

7. Prior to Mrs. Milhollan's executing her Last Will and Testament, I personally read each and every paragraph of said instrument and as each paragraph was completed Mrs. Milhollan acknowledged its contents and directed me to go on. Mrs. Milhollan was in no way over-powered by anyone at the time of the execution of her Last Will and Testament.

8. When the Last Will and Testament of Patricia Milhollan had been properly executed and witnessed I gave the original of the Last Will and Testament to Mrs. Milhollan and she retained it in her own custody.

9. I have firsthand knowledge of the foregoing and if called as a witness I could and would competently testify thereto.

DATED: This 7th day of June, 1985.

Paul E. Haefner

SUBSCRIBED and SWORN to before me this 7th day of June, 1985.

Maxine R. Bartelheim
Notary Public

MAXINE R. BARTELHEIM
Notary Public - State of Nevada

Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES AUG. 29, 1987

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

In the Matter of	)	No. 82-4846
the Estate of	)	Dept. No. 8
PATRICIA A. Milhollan,	)	*NOTICE TO SET*
Deceased.	)	

TO: MARILYN O'CONNOR, WILLIAM J. WEISS and PEARL ANN COHEE:

Pursuant to Rule 4, Paragraphs (A) and (B) of the Rules of Practice for the Second Judicial District Court, the undersigned hereby certify that the above-entitled case is at issue and notice is hereby given that upon the expiration of ten (10) days from the date of service hereof upon you, the case shall be set for trial.

The undersigned will appear before the Calendar Clerk for Setting the above 9:30 a.m. on Monday, May 20, 1985.

DATED: This 6th day of May, 1985.

DIXON & BRYDON, LTD.

John R. Brydon
325 Flint Street
P.O. Box 2450
Reno, Nevada 89505